

Boston College Law Review

Volume 59

Issue 9 *Annual Survey of Federal En Banc and Other
Significant Cases*

Article 29

5-24-2018

Front Matter

Boston College Law Review
Boston College Law School

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/bclr>

Recommended Citation

Boston College Law Review, *Front Matter*, 59 B.C.L. Rev. E. Supp. (2018), <http://lawdigitalcommons.bc.edu/bclr/vol59/iss9/29>

This Front Matter is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law Review by an authorized editor of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

BOSTON COLLEGE LAW REVIEW

Volume 59

2018

E. Supp.

COMMENTS

ANNUAL SURVEY OF FEDERAL EN BANC AND OTHER SIGNIFICANT CASES

EXCESSIVE FORCE, POLICE DOGS, AND THE FOURTH AMENDMENT IN THE NINTH CIRCUIT: THE USE OF SUMMARY JUDGEMENT IN <i>LOWRY V. CITY OF SAN DIEGO</i> <i>Natasha Dobrott</i>	1
THE DEPARTMENT THAT CRIED WOLF: TENTH CIRCUIT VACATES PRELIMINARY INJUNCTION IN ABSENCE OF LIKELY INJURY IN <i>NEW MEXICO DEPARTMENT OF GAME & FISH V. UNITED STATES</i> <i>DEPARTMENT OF THE INTERIOR</i> <i>Curtis Cranston</i>	23
IF TECHNOLOGY IS THE HARE, IS CONGRESS THE TORTOISE? SPLIT CIRCUITS IN THE WAKE OF <i>DAHDA</i> <i>Michael Koch</i>	45
TITLE VII IS NOT THE ONLY CURE FOR EMPLOYMENT DISCRIMINATION: THE IMPLICATIONS OF <i>DOE V. MERCY</i> <i>CATHOLIC MEDICAL CENTER</i> IN EXPANDING CLAIMS FOR MEDICAL RESIDENTS UNDER TITLE IX <i>Amy-Lee Goodman</i>	64
<i>MAYHEW V. TOWN OF SMYRNA</i> : THE SIXTH CIRCUIT FRUSTRATES PUBLIC EMPLOYEES' RIGHT TO A JURY TRIAL <i>Margaux Joselow</i>	83
PRAYING FOR CLARITY: <i>LUND, BORMUTH</i> , AND THE SPLIT OVER LEGISLATOR-LED PRAYER <i>John Gavin</i>	104
BANKRUPTCY'S EXCEPTIONS TO DISCHARGE: WHEN DOES A STATEMENT ABOUT A SINGLE ASSET RESPECT THE DEBTOR'S FINANCIAL CONDITION? <i>Roman Ibragimov</i>	119
NO PUBLIC BENEFITS FOR <i>PUBLIC BENEFIT</i> : THE ELEVENTH CIRCUIT'S NARROW APPROACH TO COPYRIGHT REGISTRATION <i>Emily Tate</i>	134

YOU MIGHT JUST HAVE TO WAIT: INTERPRETING STATE ACTION IMMUNITY AND THE ABILITY TO APPEAL FOLLOWING THE NINTH CIRCUIT’S DECISION IN <i>SOLARCITY CORP. V. SALT RIVER PROJECT</i> <i>Hunter Malasky</i>	149
CIRCUMVENTING CONGRESS’S COMPREHENSIVE SCHEMES: THE THIRD CIRCUIT ALLOWS EMPLOYEES OF EDUCATIONAL INSTITUTIONS TO BYPASS TITLE VII AND BRING CLAIMS UNDER TITLE IX IN <i>DOE V. MERCY CATHOLIC MEDICAL CENTER</i> <i>Lauren Stewart</i>	168
<i>TURNER</i> -ING OVER A NEW LEAF: PRE-CHARGE PLEA NEGOTIATIONS AS A CRITICAL STAGE FOR THE PURPOSES OF THE SIXTH AMENDMENT RIGHT TO COUNSEL <i>Alexis Berglund</i>	188
“BEARS NEED ROOM TO ROAM”: THE NINTH CIRCUIT’S QUESTIONABLE INTERPRETATION OF CRITICAL HABITAT DESIGNATION <i>Katherine Lee</i>	206
PRIVACY, SCREENED OUT: ANALYZING THE THREAT TO INDIVIDUAL PRIVACY RIGHTS AND FIFTH AMENDMENT PROTECTIONS IN <i>STATE V. STAHL</i> <i>Jesse Coulon</i>	225
LEGAL LIMBO: THE FIFTH CIRCUIT’S DECISION IN <i>TURNER V.</i> <i>DRIVER</i> FAILS TO CLARIFY THE CONTOURS OF THE PUBLIC’S FIRST AMENDMENT RIGHT TO RECORD THE POLICE <i>Stephanie Johnson</i>	245
TITLE VII AND THE COLLATERAL SOURCE RULE: EVALUATING THE NOT-SO EQUITABLE REMEDY IN <i>EEOC V. CONSOL ENERGY</i> <i>Virginia Calistro</i>	263
<i>PUBLIC ENTITIES BECOME A MODEL AGAINST AGE DISCRIMINATION:</i> <i>EXPANDING THE DEFINITION OF “EMPLOYER” IN GUIDO V.</i> <i>MOUNT LEMMON FIRE DISTRICT</i> <i>Kathryn Weston</i>	279
CEMENTING GOOD LAW BY TOLERATING BAD OUTCOMES: EXAMINING THE EIGHTH CIRCUIT’S COMMITMENT TO UPHOLDING THE DEFENSE OF QUALIFIED IMMUNITY FOR PRISON OFFICIALS IN <i>KULKAY V. ROY</i> <i>Peter Diliberti</i>	297

MUDDYING THE CHEVRON WATERS: THE D.C. CIRCUIT LACKS DOCTRINAL CLARITY IN <i>WATERKEEPER ALLIANCE V. EPA</i> <i>Christopher Crocker</i>	314
LAWFUL PERMANENT RESIDENCY: WHAT THE UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES GIVETH, IT CAN ALSO TAKE AWAY <i>Rebecca Hayes</i>	329
INCAPACITATING DANGEROUS REPEAT OFFENDERS (OR NOT): EVIDENTIARY RESTRICTIONS ON ARMED CAREER CRIMINAL ACT SENTENCING IN <i>UNITED STATES V. KING</i> <i>Kayleigh E. McGlynn</i>	348
THE ROAD BEYOND <i>KIOBEL</i> : THE FIFTH CIRCUIT’S DECISION IN <i>ADHIKARI V. KELLOGG BROWN & ROOT, INC.</i> AND ITS IMPLICATIONS FOR THE ALIEN TORT STATUTE <i>Vasundhara Prasad</i>	369
UNFAITHFUL BUT NOT WITHOUT PRIVACY PROTECTIONS: THE SEVENTH CIRCUIT ADDRESSES WHEN COURTS SHOULD CONSIDER AN E-MAIL INTERCEPTION UNLAWFUL IN <i>EPSTEIN V.</i> <i>EPSTIEN</i> <i>Joseph Noreña</i>	391
ADDING TO THE LIST: THE LATEST DEVELOPMENT IN THE ANOMALOUS SEVENTH CIRCUIT SUBSTANTIAL COMPLIANCE APPROACH <i>Julian Viksman</i>	409
HOME SWEET HOME? DETERMINING HABITUAL RESIDENCE WITHIN THE MEANING OF THE HAGUE CONVENTION <i>Morgan McDonald</i>	427
A CASE FOR REVISITING THE CHILD WELFARE ACT <i>Hannah Dudley</i>	444
NO HARM, NO FOUL: THE FOURTH CIRCUIT STRUGGLES WITH THE “INJURY-IN-FACT” REQUIREMENT TO ARTICLE III STANDING IN DATA BREACH CLASS ACTIONS <i>Brandon Ferrick</i>	462
THE EXIGENCIES OF DRUNK DRIVING: <i>CRIPPS V. STATE</i> AND THE ISSUES WITH TAKING DRIVERS’ BLOOD WITHOUT A WARRANT <i>Timothy Andrea</i>	482

STRIVING FOR CONSISTENCY: THE BATTLE OF JURISDICTION IN
ENFORCING ARBITRATION AWARDS
Leah Hengemuhle..... 499

WHEN THE DEFENDANT DOESN'T TESTIFY: THE EIGHTH CIRCUIT
CONSIDERS A REASONABLE BROKEN PROMISE IN *BAHTOUH V.*
SMITH
Alexandre Bou-Rhodes 520

A PRO DEBTOR AND MAJORITY APPROACH TO THE “AUTOMATIC
STAY” PROVISION OF THE BANKRUPTCY CODE—*IN RE COWEN*
INCORRECTLY DECIDED
Claudia A. Restrepo 537

ELEVENTH CIRCUIT PREMATURELY APPLIED THE RULE OF LENITY
IN *UNITED STATES V. IZURIETA*
C. Alex Dilley..... 554

Boston College Law School publishes the *Boston College Law Review* (ISSN 0161-6587) eight times per year: in January, February, March, April, May, June, October, and November. In addition, the *Review* publishes an electronic supplement, the *E. Supp.*, once per year. Editorial and Business Offices: Boston College Law Review, 885 Centre Street, Newton Centre, Massachusetts 02459. Telephone: (617) 552-8557; email: bclr@bc.edu. Periodical-class postage paid at Boston, Massachusetts and additional mailing offices. POSTMASTER: Send address changes to Boston College Law Review, P.O. Box 465, Hanover, PA 17331.

Current subscription: \$70.00; single issues: \$10.00 (plus \$10.00 for foreign mailing for both).

Print issues from the current and previous years' volumes are available upon request. Back issues of volumes 1–53 may be obtained from William S. Hein & Co., Inc. Warehouse, 24 East Ferry St., Buffalo, New York 14209–1987, (716) 882–2600. (Back issues in electronic format are available at HeinOnline <http://heinonline.org/>). Please direct requests for issues from volume 54 onward to Sheridan Press, 450 Fame Avenue, Hanover, PA 17331, (717) 632–3535.

Address changes should be sent at least 45 days before the date of the issue with which it is to take effect. The post office will not forward copies unless subscribers provide extra postage. **Claims for missing issues will be honored for one year from the date of publication only.** Direct subscription queries, claims, and address changes to:

Boston College Law Review
P.O. Box 465
Hanover, PA 17331
(717) 632–3535 (ask for Subscriber Services)
Fax: (717) 633–8920
Email: pubsvc.tsp@sheridan.com

BOSTON COLLEGE LAW SCHOOL

ADMINISTRATION

WILLIAM P. LEAHY, S.J., B.A., M.A., M.Div., S.T.L., Ph.D., President
MICHAEL J. LOCHHEAD, B.S., M.B.A., Executive Vice President
DAVID QUIGLEY, M.A., Ph.D., Provost, Dean of Faculties
VINCENT D. ROUGEAU, A.B., J.D., Dean
ALFRED C. YEN, B.S., M.S., J.D., Associate Dean for Faculty
MARIS ABBENE, B.A., J.D., Associate Dean for Academic, Career & Student Services
FILIPPA MARULLO ANZALONE, A.B., M.S.L.S., J.D., Associate Dean for Library & Computing Services
BRIAN J.M. QUINN, B.S.F.S., M.P.P., J.D., M.L.S., Associate Dean of Experiential Learning
JOHN P. STACHNIEWICZ, A.B., M.A., Associate Dean for Finance & Administration
MEREDITH RYAN, B.A., Assistant Dean for Finance & Administration
JESSICA CASHDAN, B.A., M.A., Executive Director of Advancement & Associate Dean
TRACEY WEST, B.A., J.D., Associate Dean for External Relations, Diversity & Inclusion
SHAWN MCSHAY, B.A., Assistant Dean for Admissions & Financial Aid
HEATHER HAYES, B.A., J.D., Assistant Dean for Career Services
JOHN A. GORDON, B.S., J.D., Director of Law Review Publications
FREDERICK M. ENMAN, S.J., B.A., J.D., Special Assistant to the Dean for Students

FULL-TIME FACULTY

ALEXIS ANDERSON, B.A., M.A., J.D., Associate Clinical Professor of Law
FILIPPA MARULLO ANZALONE, A.B., M.S.L.S., J.D., Professor of Law
PAULO BARROZO, LL.B., M.Jur., Ph.D., LL.M., S.J.D., Associate Professor of Law
SHARON BECKMAN, A.B., J.D., Associate Clinical Professor of Law
MARY SARAH BILDER, B.A., A.M., J.D., Ph.D., Founders Professor of Law
ROBERT M. BLOOM, B.S., J.D., Professor of Law
E. JOAN BLUM, A.B., J.D., Associate Professor of Legal Reasoning, Research & Writing
CHERYL S. BLATT, B.A., J.D., Assistant Professor of Legal Reasoning, Research & Writing
MARK S. BRODIN, B.A., J.D., Professor of Law
GEORGE D. BROWN, A.B., J.D., Robert Drinan, S.J. Professor of Law
R. MICHAEL CASSIDY, B.A., J.D., Professor of Law
MARY ANN CHIRBA, B.A., M.P.H., Sc.D., J.D., Professor of Legal Reasoning, Research & Writing
JEFFREY M. COHEN, B.A., M.St., J.D., Assistant Professor of Legal Reasoning, Research & Writing
DANIEL R. COQUILLETTE, A.B., B.A., M.A., J.D., J. Donald Monan, S.J. Professor of Law
DAVID FARBMAN, A.B., J.D., Assistant Professor of Law
SCOTT T. FITZGIBBON, B.A., J.D., B.C.L., Professor of Law
FRANK J. GARCIA, B.A., J.D., Professor of Law
KENT GREENFIELD, A.B., J.D., Professor of Law
DEAN M. HASHIMOTO, A.B., M.S., M.P.H., M.D., J.D., Associate Professor of Law
FRANK R. HERRMANN, S.J., A.B., M.Div., J.D., Associate Professor of Law
INGRID M. HILLINGER, A.B., J.D., Professor of Law
MARY HOLPER, B.A., J.D., Associate Clinical Professor; Director, Immigration Clinic
KARI E. HONG, A.B., J.D., Assistant Professor of Law
RENEE M. JONES, A.B., J.D., Professor of Law
DANIEL KANSTROOM, B.A., J.D., LL.M., Professor of Law
M. CATHLEEN KAVENY, A.B., M.A., J.D., P.Phil., Ph.D., Darald & Juliet Libby Professor of Law
ELISABETH KELLER, B.A., M.A., J.D., Associate Professor of Legal Reasoning, Research & Writing
THOMAS C. KOHLER, B.A., J.D., LL.M., Professor of Law
JOSEPH P. LIU, B.A., J.D., LL.M., Professor of Law
DANIEL LYONS, A.B., J.D., Associate Professor of Law
RAY D. MADOFF, A.B., J.D., LL.M., Professor of Law
PATRICIA A. McCOY, B.A., J.D., Liberty Mutual Insurance Professor of Law
JUDITH A. McMORROW, B.A./B.S., J.D., Professor of Law
ALAN D. MINUSKIN, B.A., J.D., Associate Clinical Professor of Law
SHU-YI OEI, A.B., M.T.S., J.D., Assistant Professor of Law
DAVID OLSON, B.A., J.D., Associate Professor of Law
LYNNISE E. PANTIN, B.A., J.D., Associate Clinical Professor of Law
VLAD PERJU, LL.B., LL.M., S.J.D., Associate Professor of Law
ZYGUNT J.B. PLATER, B.A., J.D., LL.M., S.J.D., Professor of Law
BRIAN J.M. QUINN, B.S.F.S., M.P.P., J.D., M.L.S., Associate Professor of Law
JAMES R. REPETTI, A.B., M.B.A., J.D., William J. Kenealy, S.J. Professor of Law
DIANE RING, A.B., J.D., Professor of Law
VINCENT D. ROUGEAU, A.B., J.D., Dean & Professor of Law
EVANGELINE SARDA, B.A., J.D., Associate Clinical Professor of Law
FRANCINE SHERMAN, B.A., J.D., Associate Clinical Professor, Director, Juvenile Rights Advocacy Project
NATALYA SHNITSER, B.A., M.A., J.D., David & Pamela Donohue Assistant Professor of Law
MARK SPIEGEL, A.B., J.D., Professor of Law
PAUL R. TREMBLAY, B.A., J.D., Clinical Professor of Law
MAUREEN VAN NESTE, A.B., M.P.A., J.D., Assistant Professor of Legal Reasoning, Research & Writing
CATHARINE WELLS, B.A., M.A., Ph.D., J.D., Professor of Law
RYAN WILLIAMS, B.A., J.D., Assistant Professor of Law
DAVID A. WIRTH, A.B., A.M., J.D., Professor of Law
ALFRED C. YEN, B.S., M.S., J.D., Professor of Law
KATHARINE G. YOUNG, B.A., LL.B., S.J.D., LL.M., Associate Professor of Law

BOSTON COLLEGE LAW REVIEW

Volume 59

January 2018

Number 1

Kelsey Gasseling
Caitlin J. Toto
Editors in Chief

Nicholas Baker
Maria Benvenuto
Michael O'Loughlin
Daniel Sorger
Executive Articles Editors

Chloe Booth
Christopher Cataldo
Christina Lam
Jordan Lamson
Executive Notes Editors

Matthew Rapkowski
Online Editor

Articles Editors

Daniel Cahill
Thomas Carlton
Brandon Curtin
Samantha Cutler
Sean Kennedy
Luis Alex Galliani
Paul Lakkis

Franklin Liu
David Mahoney
Jonathan Mangel
Terence McAllister
Kelly Morgan
Anna Nikolayeva
Matthew Rapkowski

Venus Chui
Antonio G. Fraone
Taylor Gibson
Mark Hayden
Thomas Lampert
John LeBlanc
Managing Editors

Kurtis Brown
Julia Eaton
Alexander Pringle
Executive Comments Editors

Senior Editors

Nicholas Anastasi
Wendy Beylik
Erin Bruno
Nicholas Centrella
Amanda Creedon
Brian Durkin
Lindsey Edinger
Meghan Fay
Thomas Fiascone
Tanner Fiske
Alyssa Fixsen

Patrick Ford
Vaishali Goyal
Lauren Hadjaris
Theodore Kaminski
Bryan Kim
Jamie Kurtz
Heekyoung Lee
Molly McGrath
David Miller
Jennifer Moore

Shannon Nelson
Meghan L. Paresky
Mitchell Perne
Eric Popp
Mary Kate Sexton
Leila Souhail
Anna Snook
Anna Stuart
Benjamin Taylor
Kelly Waldo
Sommer Wiss

BOSTON COLLEGE LAW REVIEW

Volume 59

January 2018

Number 1

Staff Writers

Lauren Allen
Timothy Andrea
Samuel Ascanio
Alexis Berglund
Samantha Bhate
Emma Bolla
Alexandre Bou-Rhodes
Molly Boyd
Virginia Calistro
Michael Casagrande
Mitchell Clough
Jesse Coulon
Curtis Cranston
Christopher Crocker
Peter Diliberti
Alex Dilley
Natasha Dobrott
Samuel Dougherty
Hannah Dudley
Hannah Esquenazi
Brandon Ferrick

Mariah Figlietti Vasquez
Abigail Garrahan
John Gavin
Amy-Lee Goodman
Rebecca Hayes
Leah Hengemuhle
Roman Ibragimov
Jennifer Jacobs
Elizabeth Johnson
Stephanie Johnson
Margaux Joselow
Srish Khakurel
Meghan King
Michael Koch
Garabed Koosherian
Brooke Kootman
Lauren Koster
Katherine Lee
Kathryn Maass
Connor Macisaac
Hunter Malasky
Hale McNulty

Morgan McDonald
Sean Patrick McGinley
Kayleigh McGlynn
Thomas McLaughlin
Christian Milde
Tyler Mills
Christina Min
Marcus Nemeth
Joseph Noreña
Terence Olsen
Jeremy Pepper
Vasundhara Prasad
Jazmyn Reid
Claudia Restrepo
Madeline Roe
Jason Sitomer
Lauren Stewart
Emily Tate
Bryan Thompson
Julian Viksman
Kathryn Weston

Daniel Lyons
Faculty Advisor

Nick Szydlowski
Webmaster

Patricia McCoy
Faculty Advisor

John Gordon
Director, Law Review Publications

David Olson
Faculty Advisor

Joan Shear
Library Liaison

Unless otherwise expressly provided, the author or authors of each article in this volume granted permission for copies of that article to be made and used by educational and other nonprofit institutions, so long as (1) copies are distributed at or below cost; (2) the authorship and journal are identified therein; and (3) proper notice of copyright is set forth. Send any other reprint permission requests to permissions-gggroup@bc.edu.

Copyright © 2018 by Boston College Law School
This REVIEW is to be cited as B.C. L. REV. E. SUPP.

